

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GARY B. GREEN)	
Claimant)	
)	
VS.)	
)	
DISNEY DIRECT MARKETING)	
Respondent)	Docket Nos. 262,422 &
)	262,423
AND)	
)	
LIBERTY MUTUAL INS. CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier request review of the July 26, 2004 preliminary hearing Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

The Administrative Law Judge (ALJ) determined the authorized physician suggested claimant would benefit from a weight reduction program. Consequently, the ALJ ordered the respondent to provide and pay for such program as well as temporary total disability compensation.

The respondent requests review of whether the ALJ exceeded his authority in ordering temporary total disability benefits and the weight loss program. Respondent further argues it did not receive notice claimant was seeking authorization for the specific weight loss program.

Claimant argues the respondent's appeal should be dismissed and the ALJ's Decision affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Initially, respondent argues claimant's notice of intent failed to specify claimant was seeking a supervised weight loss program. However, at the preliminary hearing the respondent failed to make such objection to the ALJ. Moreover, respondent agreed that it had discussions with claimant's attorney regarding aqua therapy in order to achieve weight loss for claimant. Based upon the record compiled to date, the respondent had sufficient notice that claimant was seeking weight loss assistance.

This is an appeal from a preliminary hearing. The Board has jurisdiction to review decisions from a preliminary hearing in those cases where one of the parties has alleged the ALJ exceeded his or her jurisdiction.¹ In addition, K.S.A. 44-534a(a)(2) limits the jurisdiction of the Board to the specific jurisdictional issues identified. A contention that the ALJ has erred in his finding that the evidence showed a need for medical treatment is not an argument the Board has jurisdiction to consider. K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary total disability compensation.

Although the authorized treating physician agreed claimant was at maximum medical improvement, he then further agreed it would be quite helpful if the claimant could make progress with weight reduction and general fitness. The preliminary hearing statute, K.S.A. 44-534a, as amended, grants the ALJ authority to award medical compensation pending a full hearing on the claim. Accordingly, the Board finds the ALJ did not exceed his authority when he ordered the respondent to provide medical treatment in the form of a supervised weight loss program accompanied by monthly progress and attendance reports. The Board concludes the respondent's Request for Board Review should be dismissed because the ALJ did not exceed his jurisdiction.

WHEREFORE, it is the finding of the Board that this appeal should be, and is hereby, dismissed and the preliminary hearing Decision of Administrative Law Judge Robert H. Foerschler dated July 26, 2004, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of September 2004.

BOARD MEMBER

c: Dale E. Bennett, Attorney for Claimant
Terence M. O'Malley, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ K.S.A. 44-551(b)(2)(A).